

12-16-05

ANDREWS
ATTORNEYS
KURTH LLP



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Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

December 15, 2005

VIA EXPRESS MAIL NO. EV760876142US

Commissioner for Patents
Mail Stop Petition, Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

VIA EXPRESS MAIL NO. EV760876244US

Commissioner for Patents
Mail Stop Technology Center 2122, Attn: Peter Wong
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Filing Date: 01/31/00
Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof
Inventor: Derrick Jason Birum
Assignee: Metrowerks Corporation
Examiner: Chameli Das
Group: 2122
Atty Docket No.: 650059.420

Dear Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S.
Patent and Trademark Office on April 16, 2004 and September 20, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04 and 09/20/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04 and 09/20/04".

December 15, 2005

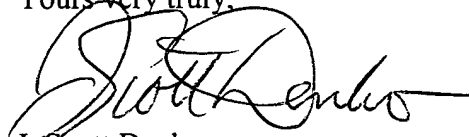
As indicated from the attached correspondence, we previously spoke with the examiner, Chameli Das, regarding this matter. On September 20, 2004, we complied with her request to submit another copy of the petition first filed on April 16, 2004.

In March 2005, our office spoke with Ms. Hicks in the Office of Petitions who advised us to contact Examiner Tuan T. Dam. On March 24, 2005, Examiner Dam advised us to contact Ms. Hicks. We spoke with Ms. Hicks again and she advised us that the decision on the petition falls under the discretion of the Director of the Technology Center, which is Peter Wong. That same day, we spoke with Jeannie Mines, assistant to Peter Wong, who stated that she would look into the matter. Our office left another voicemail for Ms. Mines on December 7, 2005 but we have not yet received a response.

Per the attached printout from PAIR on the US Patent and Trademark Office Website, the status of this matter still shows abandoned. To date, we have received no substantive communications or correspondence from the USPTO regarding this matter despite our multiple efforts both written and by telephone to get a response. We will be calling and writing again so we must with reluctance insist that the Office respond in substance and without further delay to the Petition that was first filed on April 19, 2004.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-3534 on which account the undersigned is authorized to charge.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Scott Denko", with a stylized flourish extending from the end.

J. Scott Denko

Registration No. 37,606

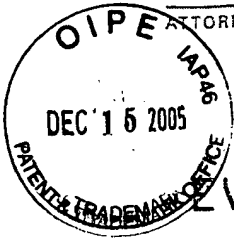
12-16-05

IFW

ANDREWS

ATTORNEYS

KURTH LLP



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(512) 320.9259 Direct
scottdenko@andrewskurth.com

September 20, 2004

VIA EXPRESS MAIL NO. EV434215647US

Assistant Commissioner for Patents
Attn: Tom Hawkins
Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Filing Date: 01/31/00
Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof
Inventor: Derrick Jason Birum
Assignee: Metrowerks Corporation
Examiner: Chameli Das
Group: 2122
Atty Docket No.: 650059.420

Dear Assistant Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S.
Patent and Trademark Office on April 16, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04"; and

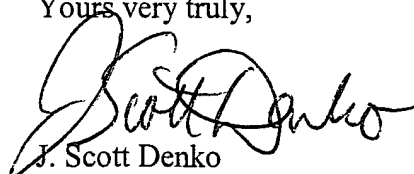
We spoke with the examiner, Chameli Das, regarding this matter. She indicated we should file another copy of the petition because she has not seen it. Accordingly, please file and make the afore-mentioned documents a part of the record hereof.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Assistant Commissioner for Patents
September 20, 2004
Page 2 of 2

Please return the enclosed postcard to confirm receipt of the above-referenced items.

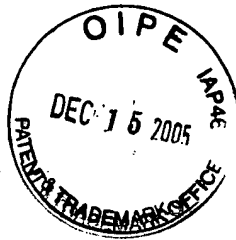
Yours very truly,

A handwritten signature in black ink, appearing to read "J. Scott Denko". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J. Scott Denko
Registration No. 37,606

JSD/ad
Encls.

ANDREWS
ATTORNEYS KURTH LLP



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Austin, Texas 78701
512.320.9200 Phone
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andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com

April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

EV434215616US

Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Filing Date: 01/31/00
Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof
Inventor: Derrick Jason Birum
Assignee: Metrowerks Corporation
Examiner: Chameli Das
Group: 2122
Atty Docket No.: 650059.420

Dear Commissioner:

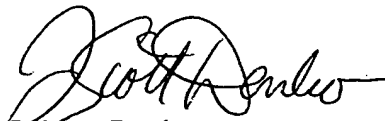
Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,


J. Scott Denko
Registration No. 37,606

As of 4/12/04

METROWERKS PATENT DOCKET

	Appl. No.	Filing Date	US Patent No	Inventors	Status - Last Action	Action Needed
Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instrumented with Tag Statements and Methods for Use Thereof (420)	09/494,765	1/31/00		Birum; Ellis; Tinker	10/28/03 - Filed Amendment and Response 10/29/03 - Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 - Rec'd Notice of Acceptance of POA from PTO	



BEST AVAILABLE COPY

Exhibit B

PATENT APPLICATION INDEX

Docket No. 650059420
 Inventor: Derrick Jason Birum, Richard Donald Ellis and Jeffrey Eee Finker
 Invention Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF
 U.S. Filing Date: January 31, 2000
 U.S. Application No. 09/494,765
 Examiner: Phone No. 0
 Art Unit: 2762
 File History:
 Small Entity: NO
 Assigned To: Metrowerks, recorded on 04/28/03, at Reel 013609, Frame 0862
 General Authorization Filed: January 31, 2000



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	Document	Date Filed with PTO	Date Mailed from PTO	Due Date
1.	Application (w/ Dec., Assign., General Authorization and Information Disclosure Statement)	01/31/2000		
2.	Request for Refund and Small entity Statement	03/15/00		
3.	Acknowledgement of Request for Refund		03/28/00	
4.	Recorded Assignment		04/18/00	
5.	FILING RECEIPT		04/25/00	
6.	European Search Report rcvd from foreign associate		06/20/01	08/20/01
7.	Supplemental Information Disclosure Statement w/EP Search	08/15/01		
8.	Supplemental IDS with 12 References	06/01/03		
9.	Recorded Assignment - Assigned to Metrowerks	04/28/03		
10.	Office Action	04/28/03	07/28/03	
11.	<i>Petition for extension of time, amendment response</i>	10/28/03		10/28/03
12.	<i>Revocation of Power of Attorney with New Power of Attorney</i>	10/28/03		
13.	<i>Notice of Abandonment</i>		4/8/04	
14.	<i>Notice of Acceptance of POA</i>		3/30/04	
15.				
6.				
7.				
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0.				
1.				
2.				
3.				

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,765	01/31/2000	Derrick Jason Birum	120073.420	3907
36485	7590	04/08/2004		
J. SCOTT DENKO ANDREWS & KURTH LLP 111 CONGRESS AVE., SUITE 1700 AUSTIN, TX 78701				
EXAMINER DAS, CHAMELI				
ART UNIT 2122		PAPER NUMBER 13		
DATE MAILED: 04/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Date Received: 4/15/04
Date Due: _____
Docketed by: _____

Exhibit "A"

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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9/494 765



BEST AVAILABLE COPY

EXAMINER

ART UNIT

PAPER NUMBER

13

DATE MAILED:

NOTICE OF ABANDONMENT

ABANDONMENT

CONTACT PERSON IS:

TONY WILKINS

305-8380

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____
- ☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____
- ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- ☐ A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.
- ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.
- ☒ The issue fee and publication fee, if applicable, have not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).
- ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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Attorney Docket No. 650059.420



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

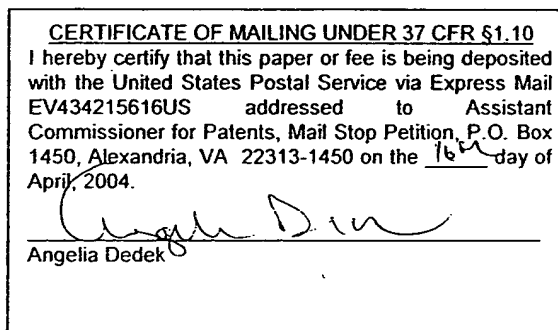
Assignee: Metrowerks Corporation

Filing Date: 01/31/00

Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450



**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By: 
J. Scott Denko
Attorney for Applicant
Registration No. 37,606

ANDREWS KURTH, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701-4069
(512) 320-9259 (office)
(512) 320-9292 (facsimile)

Date: April 16, 2004

ANDREWS

ATTORNEYS

KURTH LLP



Andrews & Kurth L.L.P.
111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

J. Scott Denko
512.320.9259 Direct
scottdenko@aklp.com@andrewskurth.com

October 29, 2003

BY EXPRESS MAIL
AIRBILL NO. EV271668782US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Title: "Software Analysis System Having An Apparatus For
Selectively Collecting Analysis Data From A Target
System Executing Software Instrumented With Tag
Statements And Method For Use Thereof"
Filing Date: 01/31/00.
Inventor: Derrick J. Birum, et al
Assignee: Metrowerks Corporation
Examiner: A. Khatri
Group: 2762
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

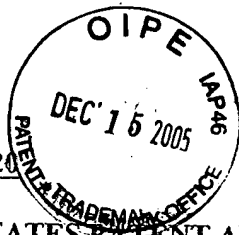
Yours truly,

ANDREWS KURTH LLP

J. Scott Denko

Exhibit "C"

Attorney Docket No.: 120073.420



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER
To: APPLIED MICROSYSTEMS CORPORATION
The document was recorded in the U.S. Patent and Trademark Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION
To: METROWERKS CORPORATION
The document was recorded in the U.S. Patent and Trademark Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 12/29/03

Signature:

Name:

Title:

Company name: METROWERKS CORPORATION

David Clifton

Vice-President of Segment Marketing



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM, et al. Group Art Unit: 2762
Application No.: 09/494,765 Examiner: A. Khatri
Filing Date: January 31, 2000 Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY
COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING
SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR
USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REVOCATION OF POWER OF ATTORNEY WITH NEW POWER
OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS**

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

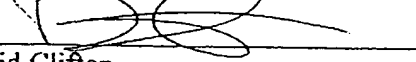
Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

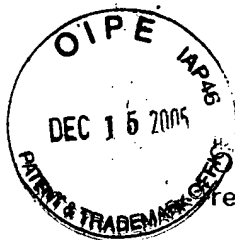
J. Scott Denko
ANDREWS KURTH LLP
Suite 1700
111 Congress Ave., Suite 1700
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

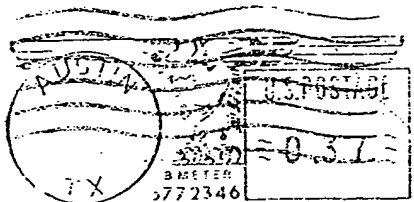
Signature: 
Name: David Clifton
Title: Vice-President of Segment Marketing
Company name: **METROWERKS CORPORATION**



BEST AVAILABLE COPY

On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: BIRUM Docket No. 120073-420
Assignee: Metromerz Resp. Atty: DENKO
Filing Date: 11/3/00 Date Mailed: 10-29-03
Serial No.: 091494, 705 Date Due:
Title: Software Analysis System Having An Apparatus
for selectively collecting analysis data...
☒ Transmittal Letter ☐ Check No. _____ for \$ _____
☒ Application PCT ☐ Utility ☐ Conversion ☐ Response to Office Action ☐ Amendment
Prov ☐ Div ☐ Cont ☐ CPA ☐ Reissue ☐ Extension of Time Request ☐ mos.
Spec ☐ pages; Claims ☐ pages ☐ Petition for
Drawings ☐ pages; Abstract ☐ pages ☐ Notice of Appeal ☐ Appeal Brief
☐ Declaration ☐ POA ☐ Formal Drawings ☐ sheets ☐ Issue Fee
☐ Form 1449, IDS ☐ Maintenance Fee ☐ Mntc Fee Addressee
☐ Assignment w/ Recordation Cover Sheet ☐ PCT Request ☐ pages ☐ PCT Fee Calc Sheet
☐ Cert. of Mailing, First Class ☐ Chapter II Demand for Substantive Examination
☐ Authorization to Charge Deposit Account ☐ Response to Invitation to Correct
50-0897
☒ Cert. of Express Mail No. E127166878245
☒ Other Statement under 37 CFR 83.73(b)
Revocation of POA with new POA and change correspondence address



ATTN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

A. Deden

650059.420

BEST AVAILABLE COPY



EV 271668782 US



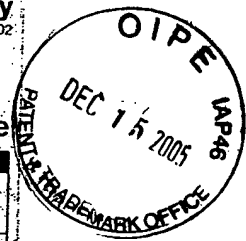
EXPRESS MAIL

UNITED STATES POSTAL SERVICE



Customer Copy
Label 11-F, June 2002

Post Office To Addressee



ORIGIN (POSTAL USE ONLY)

PO ZIP Code 78701	Day of Delivery <input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. 10 Day 29 Year 03	<input checked="" type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$ 13.65
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. 24 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials KA	Total Postage & Fees \$ 13.65

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE ()

ANDREWS & KURTH
111 CONGRESS AVE STE 1700
AUSTIN TX 78701-4069

(MW 120073.40)
150331/9593

TO: (PLEASE PRINT)

PHONE ()

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COMMISSIONER FOR PATENTS
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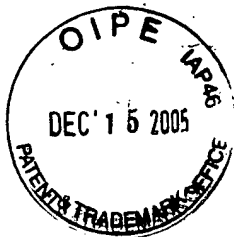
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FROM: (PLEASE PRINT) DENICO ANDREWS & KORTM 111 CONGRESS AVE STE 1700 AUSTIN TX 78701-4007 09593-1503301			TO: (PLEASE PRINT) MAIL STOP Office of Petitions COMMISSIONER FOR PATENTS PO BOX 1450 ALEXANDRIA VA 22313-1450 Attn: Tony Hawkins		

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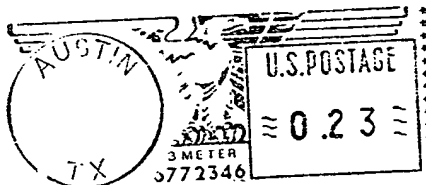




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On the date stamped hereon, the following was **RECEIVED** PATENT
received in the U.S. Patent and Trademark Office:

Applicant: Derrick Brum Docket No. 650059.420 APR 19 2004
Assignee: Metroworks Corp Resp. Atty: Dennis OFFICE OF PETITIONS
Filing Date: 1/31/00 Date Mailed: 4/16/04
Serial No.: 091494765 Date Due: _____
Title: Software Analysis System Having an Intelligent Selective Collection
Analysis Data from a Target System...
☐ Transmittal Letter ☐ Check No. _____ for \$ _____
☐ Application PCT ___ Utility ___ Conversion ___ ☐ Response to Office Action ☐ Amendment
Prov ___ Div ___ Cont ___ CPA ___ Reissue ___ ☐ Extension of Time Request ___ mos.
Spec ___ pages; Claims ___ pages ☐ Petition for _____
Drawings ___ pages; Abstract ___ pages ☐ Notice of Appeal ☐ Appeal Brief
☐ Declaration ☐ POA ☐ Formal Drawings ___ sheets ☐ Issue Fee
☐ Form 1449, IDS ☐ Maintenance Fee ☐ Mntc Fee Addressee
☐ Assignment w/ Recordation Cover Sheet ☐ PCT Request ___ pages ☐ PCT Fee Calc Sheet
☐ Cert. Of Mailing, First Class ☐ Chapter II Demand for Substantive Examination
☒ Authorization to Charge Deposit Account ☐ Response to Invitation to Correct
50-0897
☒ Cert. Of Express Mail No. EV 73421561645
☒ Other Petition to Withdraw Holder's Abandonment Based On
Failure to Answer Office Action



A Dedur

ATIN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069



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Date In Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM		Postage \$		Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day		Return Receipt Fee		Delivery Date Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Weight lbs. ozs.	Int'l Alpha Country Code		COD Fee	Insurance Fee	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
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FROM: (PLEASE PRINT) Denko ANDREWS & KURTH 111 CONGRESS AVE STE 1700 AUSTIN TX 78701-4069 9593-150331 (420)				TO: (PLEASE PRINT) MAIL STOP Petitions COMMISSIONER FOR PATENTS PO BOX 1450 ALEXANDRIA VA 22313-1450 Attn: Tom Hawkins			

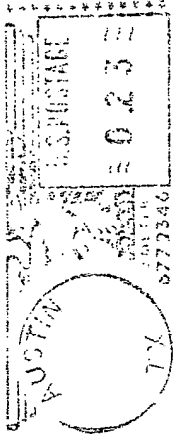
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G. Dedell
ATTN: INTELLECTUAL PROPERTY SECTION
ANDREWS KURTH, LLP
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

PATENT

On the date stamped hereon, the following was
received in the U.S. Patent and Trademark Office:

Applicant: Biram Docket No. 650059.420 (^{AK} 150331)
Assignee: Metrowerks Corp Resp. Atty: Deako
Filing Date: 11/31/00 Date Mailed: 9/20/04
Serial No.: 09/494 765 Date Due: _____
Title: Software Analysis System Having An Apparatus For Selectively
Collecting Analysis Data from a Target System ...
☒ Transmittal Letter ☐ Check No. _____ for \$ _____
☐ Application PCT ☐ Utility ☐ Conversion ☐ Response to Office Action ☐ Amendment
Prov ☐ Div ☐ Cont ☐ CPA ☐ Reissue ☐ Extension of Time Request _____ mos.
Spec _____ pages; Claims _____ pages ☐ Petition for _____
Drawings _____ pages; Abstract _____ pages ☐ Notice of Appeal ☐ Appeal Brief
☐ Declaration ☐ POA ☐ Formal Drawings _____ sheets ☐ Issue Fee
☐ Form 1449, IDS ☐ Maintenance Fee ☐ Mntc Fee Addressee
☐ Assignment w/ Recordation Cover Sheet ☐ PCT Request _____ pages ☐ PCT Fee Calc Sheet
☐ Cert. Of Mailing, First Class ☐ Chapter II Demand for Substantive Examination
☒ Authorization to Charge Deposit Account ☐ Response to Invitation to Correct
50-0897
☒ Cert. Of Express Mail No. EV 434215647US
☒ Other copy of Petition to Withdraw Holding of Abandonment Based On Failure to Receive
office action mailed 4/16/04; Express Mail Receipt dated 4/16/04 and
Return postcard mailed 4/16/04 received by Office of Petitions 4/16/04

On the date stamped hereon, the following was
received in the U.S. Patent and Trademark Office:

Applicant: Biram Docket No. 650059.4
Inventor: Metrowerks Corp Resp. Atty: Decker
Date: 11/31/00 Date Mailed: 9/20/04
Serial No.: 091494 765 Date Due: _____
Software Analysis System Having An Apparatus For Selectively
Collecting Analysis Data from a Target System . . .
Transmittal Letter ☐ Check No. _____ for \$ _____
Application PCT _____ Utility _____ Conversion _____
Prov _____ Div _____ Cont _____ CPA _____ Reissue _____
Spec _____ pages; Claims _____ pages ☐ Response to Office Action ☐ Amendment
Drawings _____ pages; Abstract _____ pages ☐ Extension of Time Request _____ mos.
Declaration ☐ POA ☐ Petition for _____
Form 1449, IDS ☐ Notice of Appeal ☐ Appeal Brief
Assignment w/ Recordation Cover Sheet ☐ Formal Drawings _____ sheets ☐ Issue Fee
Cert. Of Mailing, First Class ☐ Maintenance Fee ☐ Mntc Fee Addressee
Authorization to Charge Deposit Account ☐ PCT Request _____ pages ☐ PCT Fee Calc Sheet
50-0897 ☐ Chapter II Demand for Substantive Examination
Cert. Of Express Mail No. EV 434215647us ☐ Response to Invitation to Correct

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Date In Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$		Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee		Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee	Insurance Fee	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.			
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$		<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday			
CUSTOMER USE ONLY METHOD OF PAYMENT: Express Mail Corporate Acct. No.				Federal Agency Acct. No. or Postal Service Acct. No.			
FROM: (PLEASE PRINT) LARK AUSTIN & NORTH 111 COMMERCE AVE STE 1700 AUSTIN TX 78701-4000 95433-1562-1 (1100)				TO: (PLEASE PRINT) WILLIAM KATHLEEN COMMISSIONER FOR HEALTH 2000A 1400 ALEXANDRIA VA 22314-2100 A Hon. Tom Harkin			

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ANDREWS

ATTORNEYS

KURTH LLP

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111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Scott Denko
(512) 320.9259 Direct
scottdenko@andrewskurth.com



April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

EV434215616US

Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Filing Date: 01/31/00
Title: Software Analysis System Having An Apparatus For Selectively Collecting
Analysis Data From A Target System Executing Software Instrumented With Tag
Statements And Method For Use Thereof
Inventor: Derrick Jason Birum
Assignee: Metrowerks Corporation
Examiner: Chameli Das
Group: 2122
Atty Docket No.: 650059.420

Dear Commissioner:

Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,

J. Scott Denko
Registration No. 37,606



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Attorney Docket No. 650059.420

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

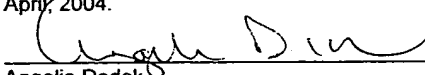
Assignee: Metrowerks Corporation

Filing Date: 01/31/00

Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents
Mail Stop Petition
Attn: Tom Hawkins
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 CFR §1.10
I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16 day of April, 2004.

Angelia Dedek

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

PETITION FEE


The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By: 
J. Scott Denko
Attorney for Applicant
Registration No. 37,606

ANDREWS KURTH, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701-4069
(512) 320-9259 (office)
(512) 320-9292 (facsimile)

Date: April 16, 2004

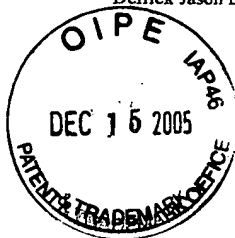


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,765	01/31/2000	Derrick Jason Birum	120073.420	3907

36485 7590 04/08/2004
J. SCOTT DENKO
ANDREWS & KURTH LLP
111 CONGRESS AVE., SUITE 1700
AUSTIN, TX 78701



EXAMINER

DAS, CHAMELI

ART UNIT PAPER NUMBER

2122

DATE MAILED: 04/08/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

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Date Received: 4/15/04
Date Due: _____
Docketed by: _____

Exhibit "A"

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
--------------------	-------------	-----------------------	---------------------

9/494765



EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

13

DATE MAILED:

NOTICE OF ABANDONMENT

ABANDONMENT

CONTACT PERSON IS:

TOM J. JUNKINS

305-8380

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____
- ☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- ☐ A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.

☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.
- ☒ The issue fee and publication fee, if applicable, have not been received.

☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

- ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- ☐ No corrected drawings have been received.

- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA 22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

As of 4/12/04

METROWERKS PATENT DOCKET						
	Appl. No.	Filing Date	US Patent No	Inventors	Status - Last Action	Action Needed
Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instrumented with Tag Statements and Methods for Use Thereof (420)	09/494,765	1/31/00		Birum; Ellis; Tinker	10/28/03 - Filed Amendment and Response 10/29/03 - Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 - Rec'd Notice of Acceptance of POA from PTO	

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Exhibit "B"

PATENT APPLICATION INDEX

Docket No. 650059/420 Client Ref. No.
 Inventor: Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Finker
 Invention Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF
 U.S. Filing Date: January 31, 2000
 U.S. Application No. 09/494,765
 Examiner: Phone No. 0
 Art Unit: 2762
 File History
 Small Entity: NO
 Assigned To: Metrowerks, recorded on 04/28/03, at Reel 013609, Frame 0862
 General Authorization Filed: January 31, 2000

	Document	Date Filed with PTO	Date Mailed from PTO	Due Date
1.	Application (w/ Dec., Assign., General Authorization and Information Disclosure Statement)	01/31/2000		
2.	Request for Refund and Small entity Statement	03/15/00		
3.	Acknowledgement of Request for Refund		03/28/00	
4.	Recorded Assignment		04/18/00	
5.	FILING RECEIPT		04/25/00	
6.	European Search Report rcvd from foreign associate		06/20/01	08/20/01
7.	Supplemental Information Disclosure Statement w/EP Search	08/15/01		
8.	Supplemental IDS with 12 References	06/01/03		
9.	Recorded Assignment -Assigned to Metrowerks	04/28/03		
10.	Office Action	04/28/03	07/28/03	
11.	<i>Petition for extension of time; amendment's response</i>	10/28/03		10/28/03
12.	<i>Revelation of Pur of Atty with New Pur Atty's name</i>	10/28/03		
4 13.	<i>Change of Carr Address</i> Notice of Abandonment		4/8/04	
3 14.	Notice of Acceptance of POA		3/30/04	
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ANDREWS
ATTORNEYS
KURTH LLP



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Austin, Texas 78701
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512.320.9292 Fax
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J. Scott Denko
512.320.9259 Direct
scottdenko@akllp.com@andrewskurth.com

October 29, 2003

BY EXPRESS MAIL
AIRBILL NO. EV271668782US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765
Title: "Software Analysis System Having An Apparatus For
Selectively Collecting Analysis Data From A Target
System Executing Software Instrumented With Tag
Statements And Method For Use Thereof"
Filing Date: 01/31/00
Inventor: Derrick J. Birum, et al
Assignee: Metrowerks Corporation
Examiner: A. Khatri
Group: 2762
Docket No. 120073.420

Dear Commissioner:


Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

Yours truly,

ANDREWS KURTH LLP


J. Scott Denko
Exhibit "C"



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

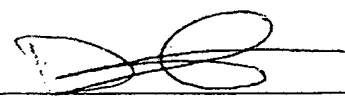
B. ☒ A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER
To: APPLIED MICROSYSTEMS CORPORATION
The document was recorded in the U.S. Patent and Trademark Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION
To: METROWERKS CORPORATION
The document was recorded in the U.S. Patent and Trademark Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 12/29/03

Signature: 

Name:

David Clifton

Title:

Vice-President of Segment Marketing

Company name: METROWERKS CORPORATION



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM, et al. **Group Art Unit:** 2762
Application No.: 09/494,765 **Examiner:** A. Khatri
Filing Date: January 31, 2000 **Confirmation No.:** 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REVOCATION OF POWER OF ATTORNEY WITH NEW POWER
OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS**

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.


Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

J. Scott Denko
ANDREWS KURTH LLP
Suite 1700
111 Congress Ave., Suite 1700
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

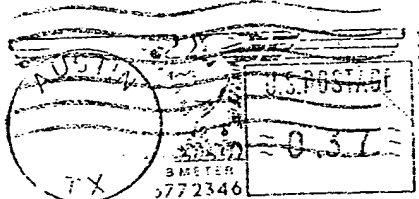
Dated: 10/29/03

Signature: 
Name: David Clifton
Title: Vice-President of Segment Marketing
Company name: **METROWERKS CORPORATION**



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: BIRum Docket No. 120073 420
Assignee: Metromerks Resp. Atty: DENKO
Filing Date: 11/3/00 Date Mailed: 10-29-03
Serial No.: 09/494,765 Date Due: _____
Title: Software Analysis System Having An Apparatus
for selectively collecting analysis data...
☒ Transmittal Letter ☐ Check No. _____ for \$ _____
☒ Application PCT ☐ Utility ☐ Conversion ☐ Response to Office Action ☐ Amendment
Prov ☐ Div ☐ Cont ☐ CPA ☐ Reissue ☐ Extension of Time Request _____ mos.
Spec _____ pages; Claims _____ pages ☐ Petition for _____
Drawings _____ pages; Abstract _____ pages ☐ Notice of Appeal ☐ Appeal Brief
☐ Declaration ☐ POA ☐ Formal Drawings _____ sheets ☐ Issue Fee
☐ Form 1449, IDS ☐ Maintenance Fee ☐ Mntc Fee Addressee
☐ Assignment w/ Recordation Cover Sheet ☐ PCT Request _____ pages ☐ PCT Fee Calc Sheet
☐ Cert. of Mailing, First Class ☐ Chapter II Demand for Substantive Examination
☐ Authorization to Charge Deposit Account ☐ Response to Invitation to Correct
50-0897
☒ Cert. of Express Mail No. E 1271 668 78245
☒ Other Statement under 37 CFR § 3.73(b)
Revocation of POA with new POA and change correspondence address



ATTN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

A. Diden

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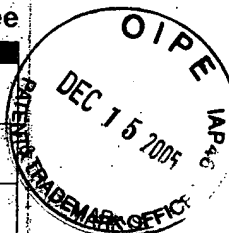
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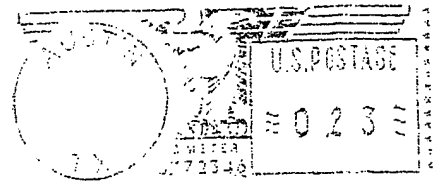
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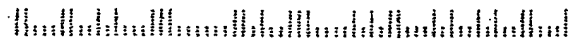




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ATIN: INTELLECTUAL PROPERTY SECTION
ANDREWS & KURTH, L.L.P.
111 CONGRESS AVE., SUITE 1700
AUSTIN, TEXAS 78701-4069

03



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On the date stamped hereon, the following was **RECEIVED**
received in the U.S. Patent and Trademark Office:

Applicant: Derrich Perium Docket No. 650059420 APR 19 2004
Assignee: Metroworks Corp Resp. Atty: Den OFFICE OF PETITIONS
Filing Date: 1/31/00 Date Mailed: 4/16/04
Serial No.: 09/494 765 Date Due: _____
Title: Software Analysis System Having Analytical Selections, Collecting
Analysis Data from a Target System...

<input checked="" type="checkbox"/> Transmittal Letter	<input type="checkbox"/> Check No. _____ for \$ _____
<input type="checkbox"/> Application PCT <input type="checkbox"/> Utility <input type="checkbox"/> Conversion _____	<input type="checkbox"/> Response to Office Action <input type="checkbox"/> Amendment
Prov _____ Div _____ Cont _____ CPA _____ Reissue _____	<input type="checkbox"/> Extension of Time Request _____ mos.
Spec _____ pages; Claims _____ pages	<input type="checkbox"/> Petition for _____
Drawings _____ pages; Abstract _____ pages	<input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Appeal Brief
<input type="checkbox"/> Declaration <input type="checkbox"/> POA	<input type="checkbox"/> Formal Drawings _____ sheets <input type="checkbox"/> Issue Fee
<input type="checkbox"/> Form 1449, IDS	<input type="checkbox"/> Maintenance Fee <input type="checkbox"/> Mntc Fee Addressee
<input type="checkbox"/> Assignment w/ Recordation Cover Sheet	<input type="checkbox"/> PCT Request _____ pages <input type="checkbox"/> PCT Fee Calc Sheet
<input type="checkbox"/> Cert. Of Mailing, First Class	<input type="checkbox"/> Chapter II Demand for Substantive Examination
<input checked="" type="checkbox"/> Authorization to Charge Deposit Account	<input type="checkbox"/> Response to Invitation to Correct
50-0897	
<input checked="" type="checkbox"/> Cert. Of Express Mail No. <u>EV 3421561645</u>	
<input checked="" type="checkbox"/> Other <u>Petition to Withdraw Holding of Abandonment Based On</u> <u>Failure to Claim Office Action</u>	

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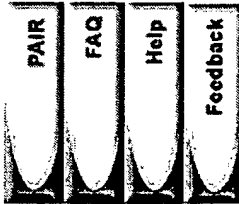


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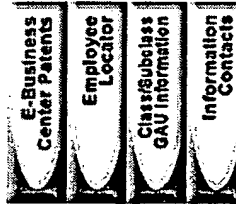
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PATENT APPLICATION INFORMATION RETRIEVAL



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Search results as of: 12-12-2005::11:18:45 E.T.

Search results for application number: 09/494,765

Application Number:	09/494,765	Customer Number:	36485
Filing or 371(c) Date:	01-31-2000	Status:	Abandoned -- Failure to Pay Issue Fee
Application Type:	Utility	Status Date:	04-08-2004
Examiner Name:	DAS, CHAMELI	Location:	TC 2100 SPE OF GAU ASSIGNED
Group Art Unit:	2122	Location Date:	09-16-2004
Confirmation Number:	3907	Earliest Publication No:	-
Attorney Docket Number:	120073.420	Earliest Publication Date:	-
Class/ Sub-Class:	717/131	Patent Number:	-
First Named Inventor:	Derrick Birum, Duvall, WA	Issue Date of Patent:	-
Title Of Invention:	SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF		

Select Search Option

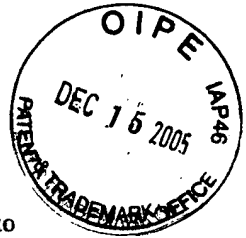
Assignments	Search
Image File Wrapper	
Patent Term Extension History	

File History

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Date	Contents Description
09-20-2004	Workflow incoming petition IFW
04-08-2004	Mail Abandonment for Failure to Pay Issue Fee
04-08-2004	Abandonment for Failure to Pay Issue Fee
03-30-2004	Correspondence Address Change
03-30-2004	Change in Power of Attorney (May Include Associate POA)
01-12-2004	Receipt into Pubs
12-01-2003	Workflow - File Sent to Contractor
12-01-2003	Receipt into Pubs
11-28-2003	Dispatch to Publications
11-19-2003	Mail Notice of Allowance
11-19-2003	Mail Formal Drawings Required
11-19-2003	Formal Drawings Required
11-19-2003	Notice of Allowance Data Verification Completed
11-19-2003	Case Docketed to Examiner in GAU
11-10-2003	Case Docketed to Examiner in GAU
11-07-2003	Date Forwarded to Examiner
10-28-2003	Response after Non-Final Action
10-28-2003	Request for Extension of Time - Granted
09-23-2003	Case Docketed to Examiner in GAU
05-06-2003	Information Disclosure Statement (IDS) Filed
04-28-2003	Mail Non-Final Rejection
04-24-2003	Non-Final Rejection
03-19-2002	Case Docketed to Examiner in GAU
03-13-2002	Case Docketed to Examiner in GAU
08-17-2001	Information Disclosure Statement (IDS) Filed
10-06-2000	Case Docketed to Examiner in GAU
05-17-2000	Case Docketed to Examiner in GAU
01-31-2000	Information Disclosure Statement (IDS) Filed
04-12-2000	Application Dispatched from OIPE
04-12-2000	Correspondence Address Change
02-28-2000	IFW Scan & PACR Auto Security Review
02-07-2000	Preexamination Location Change
02-07-2000	Initial Exam Team nn

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Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA 22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.